

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 06-0048 JP/KBM
CR-00-410 JP

MELVIN H. NELSON,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 168) filed January 17, 2006. *See* 28 U.S.C. § 2255 R. 4(b). Defendant was convicted on three counts of a superseding indictment charging violations of drug and firearms statutes. On June 17, 2002, the Court entered judgment on Defendant's conviction. The Court of Appeals for the Tenth Circuit affirmed the conviction and sentence on November 4, 2003, *see United States v. Nelson*, 80 F. App'x 636, 628 (10th Cir. 2003), and the Supreme Court denied Defendant's petition for writ of certiorari on April 5, 2004. *See Nelson v. United States*, 541 U.S. 982 (2004) (mem.). Defendant claims that his sentence is illegal under the Supreme Court's decision in *United States v. Booker*, --- U.S. ---, 125 S. Ct. 738 (2005).

Defendant's allegations of illegal sentence do not support his § 2255 claim. The *Booker* ruling provides no basis for collateral review of a criminal conviction or sentence. *See United States v. Bellamy*, 411 F.3d 1182, 1188 (10th Cir. 2005); *United States v. Price*, 400 F.3d 844, 849 (10th Cir. 2005). By its express terms, the decision in *Booker* applies only to pending cases and those on direct review. *See Booker*, --- U.S. at ---, 125 S. Ct. at 769; *Bellamy*, 411 F.3d at 1186. Furthermore,

contrary to Defendant's assertions, the rule announced in *Dodd v. United States*, --- U.S. ---, 125 S. Ct. 2478 (2005), does not allow retroactive application of the *Booker* ruling. Defendant is not entitled to relief under these decisions, and his § 2255 motion will be dismissed.

IT IS THEREFORE ORDERED that Defendant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 168) filed January 17, 2006, is DISMISSED with prejudice; and, pursuant to Fed. R. Civ. P. 58(a)(2)(A)(iii), *United States v. Sam*, No. 02-2307, 2003 WL 21702490, at *1 (10th Cir. July 23, 2003), judgment will be entered.



SENIOR UNITED STATES DISTRICT JUDGE